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U.S. DISTRICT COURT
NO. DIST. OF CA S.J.

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PVT

1 GAIL C. TRABISH, ESQ. (#103482)
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3 A Professional Corporation
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9 Attorneys for Defendant
10 TARGET STORES, a division
11 of Target Corporation, erroneously
12 sued herein as Target Corporation

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 LYNN FAWKES and JOHN FAWKES,
16 Plaintiffs,

17 vs.

18 TARGET CORPORATION, and DOES 1-40,
19 inclusive,
20 Defendants.

Case No.:

[Monterey County Case No.: M89608]

ANSWER TO UNVERIFIED
COMPLAINT

BY FAX

Complaint Filed: March 7, 2008

21 COMES NOW Defendant TARGET STORES, a division of Target Corporation,
22 erroneously sued herein as Target Corporation, and for its answer to the complaint of plaintiffs
23 LYNN FAWKES and JOHN FAWKES, on file herein, admits, denies, alleges and states the
24 following:

25 GENERAL ALLEGATIONS

26 1. Answering paragraph 1, this answering defendant admits that Target Stores is a
27 division of Target Corporation.

28 2. Answering paragraph 2, this answering defendant admits that there are four (4)
pages attached.

3. Answering paragraph 3, this answering defendant denies based on lack of

1 information and belief that plaintiffs are competent adults.

2 4. Answering paragraph 5, this answering defendant states that Target Stores is a
3 division of Target Corporation and is a Minnesota corporation whose principal place of business is
4 in Minnesota. The remainder of the allegations in this paragraph is denied based on lack of
5 information and belief.

6 5. Answering the allegation in paragraph 6, this answering defendant denies based on
7 lack of information and belief.

8 6. Answering the allegation in paragraph 8, this answering defendant denies that
9 plaintiffs were injured, but admits that the United States District Court has jurisdiction.

10 7. Answering paragraph 10, this answering defendant admits that there is one (1)
11 cause of action for Premises Liability attached.

12 8. Answering paragraph 11, this answering defendant denies each and every allegation
13 contained therein.

14 9. Answering paragraph 14, this answering defendant denies each and every allegation
15 contained therein.

16
17 **FIRST CAUSE OF ACTION – Premises Liability**

18 10. Answering paragraph Prem. L-1, this answering defendant denies each and every
19 allegation contained therein.

20 11. Answering paragraph Prem. L-2, this answering defendant denies each and every
21 allegation contained therein.

22 12. Answering paragraph Prem. L-3, this answering defendant denies each and every
23 allegation contained therein.

24 13. Answering paragraph Prem. L-5, this answering defendant denies each and every
25 allegation contained therein.

26 **DEMAND FOR JURY TRIAL**

27 This answering defendant demands a jury trial.

28

AFFIRMATIVE DEFENSES

COMES NOW, Defendant TARGET STORES, a division of Target Corporation, erroneously sued herein as Target Corporation, and for its answer to the complaint of plaintiffs on file herein alleges as follows:

AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF, this answering defendant is informed and believes and thereon alleges that neither the complaint nor any of its alleged causes of action states facts sufficient to constitute a cause of action against this answering defendant.

AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF, this answering defendant is informed and believes and thereon alleges that plaintiffs failed to mitigate their alleged damages as required by law.

AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF, this answering defendant is informed and believes and thereon alleges that plaintiffs were comparatively at fault in the manner and style as set forth in the case of *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, and defendant prays that any and all damages sustained by said plaintiffs be reduced by the percentage of their negligence.

AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF, this answering defendant is informed and believes and thereon alleges that the damages complained of, if any there were, were proximately contributed to or caused by the carelessness, negligence, fault or defects created by the remaining parties in this action, or by other persons, corporations or business entities unknown to this answering defendant at this time, and were not caused in any way by this answering defendant, or by persons for whom this answering defendant is legally liable.

Should this answering defendant be found liable to plaintiffs, which liability is expressly

1 denied, said defendant is entitled to have this award against it abated, reduced or eliminated to the
2 extent that the negligence, carelessness, fault or defects created by the remaining parties in this
3 action, or by said other persons, corporations or business entities, contributed to plaintiffs'
4 damages, if any.


5 **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
6 **VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
7 **THEREOF**, this answering defendant is informed and believes and thereon alleges that plaintiffs
8 knew, or in the exercise of ordinary care should have known, of the risks and hazards involved in
9 the undertaking in which they were engaged, but nevertheless and knowing these things, did freely
10 and voluntarily consent to assume all the risks and hazards involved in the undertaking.

11 **WHEREFORE**, this answering defendant prays as follows:

- 12 1. That plaintiffs take nothing by their complaint and that this answering defendant be
13 dismissed hence;
- 14 2. For reasonable attorneys' fees;
- 15 3. For costs of suit incurred herein; and
- 16 4. For such other and further relief as the Court deems fit and proper.

17
18 DATED: April 17, 2008

BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation

19
20
21 By: 
22 GAIL C. TRABISH, ESQ.
23 Attorneys for Defendant
24 TARGET STORES, a division of
Target Corporation, erroneously sued
herein as Target Corporation

25 GCT01430783

CERTIFICATE OF SERVICE
(28 U.S.C. §1746)

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date indicated below, at the above-referenced business location, I sealed envelopes, enclosing a copy of the **ANSWER TO UNVERIFIED COMPLAINT**, addressed as shown below, and placed them for collection and mailing following ordinary business practices to be deposited with the United States Postal Service on the date indicated below:

Jim W. Yu, Esq.
Balamuth Harrington, LLP
3 Altarinda Road, #202
Orinda, CA 94563
(925) 254-1234 phone
(925) 254-0778 fax

Attorneys for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct. Executed at Oakland, California on April 18, 2008.



ALEXINE BRAUN

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